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HAWAII LABOR
RELATIONS BOARD

Attorneys for Director of Labor
and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of) CASE NO. OSH 2009-9
) (Inspection No. 311435036)
DIRECTOR, DEPARTMENT OF LABOR)
AND INDUSTRIAL RELATIONS,) STIPULATION AND SETTLEMENT
) AGREEMENT; EXHIBITS "A"- "B";
Complainant,) APPROVAL AND ORDER
)
vs.)
)
TORY'S ROOFING &)
WATERPROOFING, INC.,)
)
Respondent.)

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and
Respondent TORY'S ROOFING & WATERPROOFING, INC. ("Respondent"), having reached
a full and complete settlement of the above-captioned contested case presently pending before
the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about October 17, 2008, the Director, by and through the State of Hawaii's
Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located

at 2069 California Avenue #8, Wahiawa, Hawaii 96786.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on January 7, 2009 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$1,575.00. *See Exhibit A.*

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 2069 California Avenue #8, Wahiawa, Hawaii 96786.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.
4. Respondent agrees that it has or will abate each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22. Respondent shall submit the completed abatement certification to HIOSH no later than ten (10) days after this Stipulation and Settlement Agreement ("Agreement") is filed; failure to timely do so may result in follow-up inspections and penalties.
5. The Director agrees to delete Respondent's entire Citation, including all penalties assessed.

6. In return, Respondent agrees to do all of the following for three (3) years after this Agreement is filed unless a shorter time period is specifically mentioned below:

a. Respondent shall provide comprehensive training on HIOSH's rules and on hazards associated with roofing work to all employees and always before letting a new employee work at any of Respondent's work sites. Respondent will:

1) Provide all employees with fall protection training conducted by the Roofing Contractors Association of Hawaii every year;

2) Have its Safety Management Team, which presently includes Michael Tory, Brandon Tory, Joseph Boehm, and Sandi Whitley, provide all employees with monthly in-house fall protection training including: (a) inspection of all employees' personal fall arrest systems; and (2) retraining on fall protection via a review of Respondent's safety program and/or fall protection videos; and

3) Document each employee's training on a form that has the employee's name in print and is signed and dated by the employee.

b. For each jobsite, conduct safety and hazard inspections and complete Respondent's Safety & Hazard Inspection Checklist as follows: (a) daily by Respondent's foremen; and (b) randomly each week by a management official of Respondent. See Exhibit "B" (Safety & Hazard Inspection Checklist).

c. Any employee, including those with supervisory or management duties, found to be in violation of Respondent's or HIOSH's Rules shall be immediately disciplined following Respondent's policies and procedures consistent with this Agreement. All such employees will sign and date a Disciplinary Action Form ("Form") on site or before the next work day. If any such employee refuses to sign the Form, Respondent will complete the Form

stating that the employee refused to sign it and will also have the Form witnessed and signed.

d. Each month, Respondent will review all Disciplinary Action Forms for employee violations associated with fall protection hazards and ensure that employees have received immediate written warnings, suspensions, or terminations for all such violations.

e. For any employee committing a third offense¹ associated with fall protection hazards, Respondent will either terminate the offending employee or give the offending employee double suspension time, have the employee complete retraining on Respondent's and HIOSH's rules for fall protection hazards, and put the employee on notice that a fourth offense will result in automatic termination.

f. Within thirty (30) days after this Agreement is filed, Respondent shall schedule an audit of Respondent's program with HIOSH's Consultation and Training Branch and sign up for any other assistance agreed upon by Respondent and HIOSH. HIOSH will not cite Respondent for any violation identified during Respondent's audit with HIOSH's Consultation and Training Branch if and only if Respondent corrects each violation by the deadline HIOSH sets for correcting the violation. Respondent understands that if it does not timely correct any violation identified as part of Respondent's audit, Respondent may be cited by HIOSH. Respondent also understands and acknowledges that its audit with HIOSH's Consultation and Training Branch will not prevent it from being inspected or cited by HIOSH as part of any non-audit inspection.

¹ An employee will be regarded as having a first offense only if the employee has been offense-free for a one-year period before the employee's latest offense. If an employee has been offense-free for a one-year period prior to the employee's latest offense, the employee's prior offense will not be counted. For any employee who has not been offense-free during the one-year period before the employee's latest offense, however, all prior offenses by the employee will be counted and added to determine the total number of offenses the employee has committed.

g. Respondent confirms that it already has a "Tie Off It's Your Life" banner, which Respondent will continuously post at its office work site for one (1) year after this Agreement is filed.

7. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

8. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

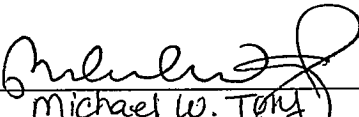
9. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

10. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

11. The Parties agree that upon the approval of this Agreement by the Board, the Board shall dismiss this case and Respondent's appeal.


DATED: Honolulu, Hawaii, 6th of September 2009.

TORY'S ROOFING & WATERPROOFING, INC.

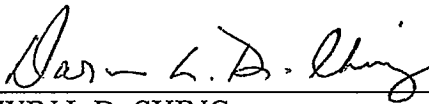
By: 
Its: Michael W. Tory
Vice-President

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS



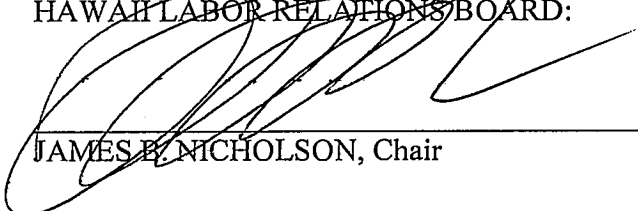
J. GERARD LAM
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii


DARWIN L.D. CHING

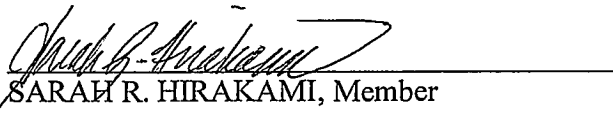
APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 350

DATED: September 23, 2009



JAMES E. NICHOLSON, Chair


EMORY J. SPRINGER, Member
SARAH R. HIRAKAMI, Member

In re: Director, Dept. Of Labor And Indus. Relations v. Tory's Roofing & Waterproofing, Inc.,
Case No. OSH 2009-9, Stipulation And Settlement Agreement; Exhibit "A"; Approval And
Order.

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813
Phone: (808)586-9110 FAX: (808)586-9104



Certified Number: 7006 3450 0003 7802 9011

Citation and Notification of Penalty

To: Tory's Roofing & Waterproofing Inc and its successors 96-1382 Waihona St Pearl City, HI 96782	Inspection Number: 311435036 (Soon Hye Edgerton) Inspection Date(s): 10/17/2008- 10/17/2008 Issuance Date: 01/07/2009 OSHC ID: E4528 Optional Report No.: 00109 Inspection Type: Complaint Scope of Inspection: Partial Inspection
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Inspection Site:
2069 California Ave #8
Wahiawa, HI 96786

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

DARWIN L.D. CHING, DIRECTOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

Tory's Roofing & Waterproofing Inc
96-1382 Waihona St
Pearl City, HI 96782

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

I attest that the information contained in this document is accurate and that the affected employees and their
representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 01/07/2009. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 311435036
Inspection Dates: 10/17/2008 - 10/17/2008
Issuance Date: 01/07/2009



Citation and Notification of Penalty

Company Name: Tory's Roofing & Waterproofing Inc
Inspection Site: 2069 California Ave #8, Wahiawa, HI 96786

Citation 1 Item 1 Type of Violation: **Serious**

29 CFR 1926.95(a) [Refer to chapter 12-114.2, HAR] was violated because:

Two employees, who were using nailguns to install asphalt shingles onto the roof structure were not using eye protection. Employees are exposed to potential eye injuries from nails ricocheting.

29 CFR 1926.95(a) states "Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact."

~~Location:~~ Project site at 2069 California Ave #8 _____

Date By Which Violation Must be Abated:
Penalty:

01/12/2009
\$ 875.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 311435036
Inspection Dates: 10/17/2008-10/17/2008
Issuance Date: 01/07/2009



Citation and Notification of Penalty

Company Name: Tory's Roofing & Waterproofing Inc
Inspection Site: 2069 California Ave #8, Wahiawa, HI 96786

Citation 1 Item 2 Type of Violation: Serious

29 CFR 1926.501(b)(10) [Refer to chapter 12-121.2, HAR] was violated because:

Six employees, who were working on a one story residential roof, were not protected from falling to ground level. The height of the roof eave was 8 feet above ground level and the pitch of the roof was 4/12 vertical to horizontal. Without proper fall protection, the employees were potentially exposed to serious fall injuries.

29 CFR 1926.501(b)(10) states "Roofing work on Low-slope roofs. Except as otherwise provided in paragraph (b) of this section, each employee engaged in roofing activities on low-slope roofs, with unprotected sides and edges 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems, safety net systems, personal fall arrest systems, or a combination of warning line system and guardrail system, warning line system and safety net system, or warning line system and personal fall arrest system, or warning line system and safety monitoring system. Or, on roofs 50 feet (15.25 m) or less in width (see Appendix A to Subpart M of this part), the use of a safety monitoring system alone [i.e. without the warning line system] is permitted."

Location: Project site at 2069 California Ave #8

Date By Which Violation Must be Abated:
Penalty:

01/12/2009
\$ 700.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Tory's Roofing & Waterproofing Inc
Inspection Site: 2069 California Ave #8, Wahiawa, HI 96786

Citation 2 Item 1 Type of Violation: Other

29 CFR 1926.502(d)(17) [Refer to chapter 12-121.2, HAR] was violated because:

An employee, who was wearing a red, full body harness, was observed to have the attachment point of the full body harness in the center of his lower back near waist level.

29 CFR 1926.502(d)(17) states "The attachment point of the body belt shall be located in the center of the wearer's back. The attachment point of the body harness shall be located in the center of the wearer's back near shoulder level, or above the wearer's head."

Location: Project site at 2069 California Ave #8

Date By Which Violation Must be Abated:
Penalty:

Corrected
\$ 0.00



DARWIN L.D. CHING
Director

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

SUMMARY OF PENALTIES

Company Name: Tory's Roofing & Waterproofing Inc
Inspection Site: 2069 California Ave #8, Wahiawa, HI 96786
Issuance Date: 01/07/2009

Summary of Penalties for Inspection Number 311435036

Citation 1, Serious	= \$ 1,575.00
Citation 2, Other	= \$ 0.00
TOTAL PENALTIES	= \$ 1,575.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.

Tory's Roofing & Waterproofing, Inc.
Safety & Hazard Inspection Checklist

Project Name: _____ Inspection Date: _____ Time: _____

Roofing Crew (foremen): _____ (Instructions: Place check mark (✓) for either S – Satisfactory or U – Unsatisfactory)

Description	S	U
1. Fall Protection System (FPS): ___ Personal Fall Arrest System: Lifeline/connectors/anchorage secured and rigged so employee cannot fall more than 6' or lower. Workers installed and are wearing PPS properly. ___ Guardrail System: Top edge height of top rails must be 42", plus or minus 3", above walking/working level. ___ Safety Monitoring, ___ Safety Net System, ___ Controlled Access Zones, ___ Warning Line System, ___ Covers/Canopies, ___ Toe Boards, ___ OTHER:		
2. Kettle: Warning barricade, Fire Extinguishers, 25 ft. away from building, face shield, gas can stored away from kettle, secured propane tanks from falling, temperature gauge, water hose in proper and safe condition.		
2. Material Handling: Proper lifting technique, lift with legs, get help when needed - control loads - rest breaks/no exhaustion - no rapid movement/twisting/bending/repetitive movement - good housekeeping		
3. Housekeeping: Tidy workplace - no slippery floors/trip hazards - sharp objects eliminated - clear/safe access to work areas - egress from work areas - dust controlled/water and PPE		
4. Fire: Combustible/flammable materials properly stored/used good housekeeping - fire extinguishers available - emergency plan.		
5. Personal Protective Equipment (PPE): Workers properly wearing hard hats, steel toe shoes, eye protection glasses, long sleeved t-shirts, long pants, (no holes), gloves, etc.		
6. Hand Tools: Right tools for the job - used properly - good condition/maintenance; Guards - isolation - eye/face protection - flying debris controlled		
7. Scaffolding: All scaffolds correctly braced and stabilised - 3:1 height to base ratio; Firm foundation, plumb and level; Ladder access provided and used; Proper platform (3 planks/675mm) - planks secured; Guardrails and toe boards - 900 to 1100mm high, within 200mm of working face, mid-rail.		
8. Ladders: Secured against movement or footed; Ladders in good condition - regularly inspected - extend 1m above platform - 4:1 angle - out of access ways, vehicle movements; Climbing - no carrying loads, 3 points of contact, no higher than 3 rd step down - use for access only, not working platforms.		
9 Falling Materials: Materials secured - kept back from edge - toe boards - hard hats		
10. Public Protection: Sufficient hoarding, fencing and barricades, safe pedestrian access past site traffic management for loading and delivery - construction separated from occupied areas of projects		
11. Health: First aid training and kits complete and accessible - clean sheds, toilets and washing facilities - good personal hygiene - hazardous chemicals, inhalation, absorption, ingestion controlled - MSDS available and training - proper labelling.		
12. Other:		

CORRECTIVE ACTION: List immediate steps taken to unsatisfactory items above:

Item# _____ Describe Task Completed _____

Date _____

PENDING ACTION: List any items that was not able to be resolved immediately.

Item# _____ Describe Task Completed _____

Date _____

Inspection Completed By: _____